

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SHIRLEY R. PAGE,

Plaintiff,

V.

MATTHEW H. HEARNE,

Defendant.

No. 4:11CV1757 JCH

MEMORANDUM AND ORDER

This matter is before the Court on its own motion. Rule 12(h)(3) of the Federal Rules of Civil Procedure states, “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” The Court has reviewed the complaint and has determined that it should be dismissed for lack of jurisdiction.

Plaintiff brings this action against defendant Hearne for legal malpractice. Plaintiff alleges that she hired Hearne to represent her in an employment discrimination suit but that he failed to timely file a complaint on her behalf, resulting in the running of the statute of limitations. Plaintiff further alleges that Hearne falsified documents he sent to the Office of Chief Disciplinary Counsel to cover up his error. Plaintiff seeks monetary damages.

Negligence is a state law claim that can only be brought in federal court if diversity jurisdiction exists. See 28 U.S.C. § 1332. In this case, diversity jurisdiction

does not exist because both plaintiff and defendant reside in Missouri. As a result, the Court will dismiss this case without further proceedings.

Finally, the Court has reviewed plaintiff's financial affidavit and finds that she qualifies to proceed in forma pauperis.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [Doc. 2] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel [Doc. 4] is **DENIED** as moot.

IT IS FURTHER ORDERED that this action is **DISMISSED** for lack of jurisdiction.

Dated this 27th day of October, 2011.

/s/Jean C. Hamilton

JEAN C. HAMILTON

UNITED STATES DISTRICT JUDGE